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ORDINANCE NO.IX OF 2013

AN

ORDINANCE

*to provide for protection against waging of war against
Pakistan and the prevention of acts threatening the security of
Pakistan*

WHEREAS it is expedient to provide for protection against waging of war against Pakistan, prevention of acts threatening the security of Pakistan and for speedy trial of offences falling in the Schedule annexed to this Ordinance and for matters connected therewith or incidental thereto;

AND WHEREAS pursuant to the directions of the Hon'ble Supreme Court in cases of civil disturbance in different parts of the Country, it has become imperative to promulgate a law in order to give effect to such directions;

AND WHEREAS the Senate and the National Assembly are not in Session and the President is satisfied that the circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution of the Islamic Republic of Pakistan, the President is pleased to make and promulgate the following Ordinance:-

1. **Short title, extent and commencement.**—(1) This Ordinance may be called the Protection of Pakistan Ordinance, 2013.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date or dates as the Federal Government may appoint in this behalf and different dates may be appointed for different provisions of this Ordinance.

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "Armed forces" means the Military, Naval and Air Forces of Pakistan and the Reserves of such Forces;

(b) "Civil armed forces" means Police, Frontier Constabulary, Frontier Corps, Pakistan Coast Guards, Pakistan Rangers or any other civil armed force notified by the Government as such;

(c) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);

(d) "Enemy alien" means a person who fails to establish his citizenship of Pakistan and is suspected to be involved in the waging of war or insurrection against Pakistan or depredation on its territory by virtue of involvement in offences specified in the Schedule;

(e) "Special Court" means the Special Court established under section 7;

(f) "Police" includes all the police forces established by the Provincial Governments;

(g) "Government" means the Federal Government;

- (h) "Prosecutor General" means the person appointed as Prosecutor General by the Government under this Ordinance;
- (i) "Prosecuting agency" means a prosecuting agency established by the Government for the prosecution of offences falling under this Ordinance;
- (j) "Schedule" means a Schedule annexed to this Ordinance;
- (k) "Scheduled offence" means an offence as set out in the Schedule annexed to this Ordinance; and
- (l) "Special Judicial Magistrate" means the Special Judicial Magistrate appointed under section 7.

3. **Use of armed forces and civil armed forces to prevent scheduled offences.**—(1) Any police officer, or member of the armed forces, or civil armed forces who is present or deployed in any area may, on reasonable apprehension of commission of a scheduled offence after giving sufficient warning, use the necessary force to prevent the commission of a scheduled offence, and in so doing shall, in the case of an officer of the armed forces or civil armed forces, exercise all the powers of a police officer under the Code.

(2) In particular and without prejudice to generality of sub-section (1), an officer of the police, armed forces and civil armed forces may,—

- (a) after giving prior warning use such force as may be deemed necessary or appropriate, keeping in view all the facts and circumstances of the situation, against any person who is committing or in all probability is likely to commit a scheduled offence, it shall be lawful for any such officer after forming reasonable apprehension that death, grievous hurt or destruction of property may be caused by such act, to fire, or order the firing upon any person or persons against whom he is authorized to use force in terms hereof;
- (b) any police officer, a member of the armed forces or civil armed forces acting in aid of civil authority may arrest, without warrant, any person who has committed a scheduled offence or against whom a reasonable suspicion or credible information exists that he has committed, or is about to commit any such act or offence; and
- (c) any such officer may enter and search, without warrant any premises to make any arrest or to take possession of any property, fire-arm, weapon or article used, or likely to be used, in the commission of any scheduled offence.

(3) Nothing contained in sub-section (1) or sub-section (2) shall affect the provisions of Chapter IX of the Code and the provisions of section 132 of the Code shall apply to any person acting under this section.

4. **Application of Code.**—The provisions of the Code of Criminal Procedure (Act V of 1898) in so far as these are not inconsistent with the procedure provided in this Ordinance shall be applicable to inquiries, investigations and trial of the Scheduled Offences.

5. **Investigations.**—(1) All the scheduled offences shall be cognizable and non-bailable.

(2) All scheduled offences shall be inquired into and investigated by a Joint Investigation Team comprising of one gazetted police officer and two officers from the armed forces/civil armed forces acting in aid of civil authority.

(3) Whenever a person is arrested or detained in custody under clause (b) of sub-section (2) of section 3 and it appears that the inquiry or investigation cannot be completed within the period of twenty-four hours, a member of Joint Investigation Team or any other officer acting under him, excluding the time necessary for journey from the place of arrest or detention to the court shall produce him before a Special Judicial Magistrate and may apply for remand of the accused to the custody of the police or custody of any other investigating agency.

(4) A Special Judicial Magistrate may authorize, from time to time, the detention of the accused in such custody as such Special Judicial Magistrate thinks fit for a term not exceeding ninety days:

Provided that all such reports requesting for further custody of the accused shall be submitted through the Public Prosecutor.

(5) A person arrested or detained under this Ordinance whose identity is unascertainable shall be considered as an enemy alien and, subject to provisions of section 14, he shall be presumed to have joined insurrection against Pakistan:

Provided that for the purposes of this Ordinance, such alien shall include a Commonwealth citizen.

6. **Preventive Detention.**—The Government may by an order in writing issued by the Secretary Ministry of Interior, or any officer, not below the rank of BPS-21, specifically designated in this behalf, authorize the preventive detention of a person for a period not exceeding ninety days if there are grounds to infer that such person is acting in a manner prejudicial to the integrity, security, defense of

Pakistan or any part thereof, or external affairs of Pakistan, or public order or maintenance of supplies and services;

Explanation 1: A person connected or likely to be connected with the commission of a scheduled offence or a person falling under sub-section (5) of section 5 shall be deemed to be a person acting in the manner stated above:

Provided that detention of such person shall be regulated in accordance with the provisions of Article 10 of the Constitution:

Provided further that without prejudice to the above, an enemy alien may be detained by the Government for such period as may be determined by it from time to time by virtue of clause (9) of Article 10 of the Constitution.

7. **Report.**—Upon completion of investigation, the Joint Investigation Team shall, through the Public Prosecutor, submit a report before the Special Court.

Provided further that notwithstanding anything contained in the Qanun-e-Shahadat, 1984 (P.O.10 of 1984), such report shall be admissible in evidence against the accused.

8. **Establishment of Special Courts etc.**—(1) The Government may establish as many Special Courts under this Ordinance as determined by it.

(2) The Government, in consultation with the Chief Justice of the concerned High Court, may appoint any person as judge of the Special Court constituted under this Ordinance who is or has been a Sessions Judge in any province of Pakistan or has been an Advocate of the High Court for a period of not less than ten years.

(3) A judge Special Court shall have all the powers of a Sessions Court as provided under the Code.

(4) The Government may provide security of tenure to a judge of the Special Court appointed under this Ordinance through rules to be framed under this Ordinance.

(5) The Government may, in consultation with the Chief Justice of the concerned High Court, appoint any Magistrate of the First Class serving as a member of the subordinate judiciary under any High Court or any other officer of not less than BPS-18 of the Pakistan Administrative Service or Provincial Management Service of any Province as Special Judicial Magistrate.

(6) The Special Judicial Magistrate shall have all the powers of Magistrate First Class provided under the provisions of the Code, unless these are inconsistent with the provisions of this Ordinance.

(7) No Special Court shall take cognizance of a scheduled offence except on a report submitted under section 7.

9. **Place of inquiries, investigations and trials etc.**—(1) The Government, on the report of a prosecuting agency, shall determine the place of custody, inquiry, investigation and trial of a scheduled offence anywhere in Pakistan.

(2) A person convicted of a scheduled offence subject to direction of the Government may be confined at any place in Pakistan including the prisons established by the Provincial and Federal Governments.

10. **Establishment of Prosecuting Agency.**—The Government shall establish an independent Prosecuting Agency headed by a Prosecutor General in order to provide consultation and legal guidance to the investigating agency and to conduct the prosecution of scheduled offences.

11. **Prosecutor General.**—(1) The Government may appoint any person as Prosecutor General who is not less than forty-five years of age and has been an Advocate of the High Court for a period of not less than ten years.

(2) The Prosecutor General may issue instructions and guidelines for the competent investigation and effective prosecution of the cases of scheduled offences.

(3) The Prosecutor General may, with prior approval of the Government, withdraw from the prosecution of any accused in a case pending before any Special Court and on submission of such request the Court shall discharge or acquit the accused from the case as it may deem fit.

12. **Protection of judges, prosecutors and witnesses etc.**—The Government shall take appropriate measures to provide adequate security to the prosecution witnesses, investigating officers, prosecutors, Special Judicial Magistrates and Judges of the Special Courts and for this purpose may establish, anywhere in Pakistan, safe houses and high security prisons with court rooms.

13. **Joint trial.**—(1) While trying any offence under this Ordinance, a Special Court may also try any other offence, which an accused may, under the Code of Criminal Procedure, 1898, be charged, at the same trial if the offence is connected with such other offence.

(2) If, in the course of any trial under this Ordinance of any scheduled offence it is found that the accused person has committed, in addition any other offence under any other law for the time being in force, the Special Court may convict an accused for such other offence also and pass any sentence authorized by this Ordinance or, as the case may be, such other law.

14. **Burden of proof.**—An accused facing the charge of a scheduled offence on existence of reasonable evidence against him, shall be presumed to be engaged in waging war against Pakistan unless he establishes his non-involvement in the offence.

15. **Punishments.**—Notwithstanding anything contained in the Pakistan Penal Code or any other law for the time being in force, the scheduled offence shall be punishable with imprisonment which may extend to ten years, with fine and confiscation of property unless the scheduled offence already provides a higher punishment.

16. **Transfer of cases.**—(1) Where, after taking cognizance of an offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, return the case to the prosecuting agency for its submission before a court of ordinary jurisdiction.

(2) The Prosecutor General may at any stage of the proceedings withdraw a case from one Special Court and may submit the same before another Special Court constituted under this Ordinance.

17. **Certain provisions of the Code not applicable.**—The provisions of sections 374, 426, 435, 439, 439A, 491, 496, 497, 498 and 561 A of the Code shall not be applicable to the scheduled offences.

18. **Appeal.**—(1) An appeal against the final judgment of a Special Court shall lie to the Supreme Court.

(2) Copies of the judgments of a Special Court shall be supplied to the accused and public prosecutor on the day the judgment is pronounced.

(3) Any aggrieved person or the Government may file an appeal against the final judgment of a Special Court within a period of fifteen days from the pronouncement of judgment.

19. **Savings.**—No member of the police, armed forces or civil armed forces acting in aid of civil authority, Prosecutor General, prosecutor, Special Judicial Magistrates or the Judge of a Special Court shall be liable to any action for the acts done in good faith during the performance of their duties.

20. **Power to make rules.**—The Government may from time to time make rules to carry out the purposes of this Ordinance and may also amend, delete or add any offence in the Schedule by publication of a notification in the official gazette.

SCHEDULE
[See section 2(i)]

Scheduled Offences (1) The following acts, if committed with the purpose of waging war against Pakistan or threatening the security of Pakistan shall be the scheduled offences and includes other offences relating to:

- (i) acts that are calculated to influence or affect the conduct of Government by intimidation or coercion, or to retaliate against government conduct;
- (ii) crimes against ethnic, religious and political groups or minorities including offences based on discrimination, hatred, creed and race;
- (iii) use of arson, fire-bombs, suicide bombs, biological weapons, chemical weapons, nuclear arms, plastic explosives and other materials capable of exploding or creating bombs employed to kill persons or destroy property;
- (iv) use of arson and bombs on public places, government premises, sites of worship, historical places, business concerns, or other places, and risking or causing death to any person therein;
- (v) killing, kidnapping, extortion, assault or attack of members of the Parliament, Judiciary, Executive, Media, and other important personalities;
- (vi) killing, kidnapping, extortion, assault or attack on officers and employees of Pakistan including armed forces and law enforcement agencies;
- (vii) killing, kidnapping, extortion, assault or attack on foreign officials, official guests, tourists, foreign visitors, or internationally protected persons etc;
- (viii) killing, kidnapping, extortion, assault or attack on social or welfare workers, including health personnel, aid workers, and volunteers;
- (ix) destruction of or attack on communication and interaction lines, devices, grids of stations, or systems etc;
- (x) destruction of or attack on energy facilities including dams, power generating and distributing systems including stations, lines and poles;
- (xi) destruction of or attack on aircrafts and airports, attack on flight crew with any weapon or endangering human life by means of weapons on aircrafts;

- (xii) destruction of or attack on gas or oil pipelines and liquid or natural gas facilities and other means of their transport including tankers;
 - (xiii) destruction of or attack on of national defense materials, premises, utilities, and installations including check posts, prisons and other fixtures;
 - (xiv) crimes against computers including cyber crimes, internet offenses and other offences related to information technology etc;
 - (xv) wrecking, disrupting or attacking mass transport systems including trains, buses, cars and their stations and ports;
 - (xvi) violence or attack against maritime navigation, maritime fixed platforms, shipping and port installations and other maritime fixtures;
 - (xvii) violence against nuclear arms, sites or any other related installations;
 - (xviii) hostage taking, or attempting to take hostage any person;
 - (xix) violence against nationals occurring outside of Pakistan;
 - (xx) transcending or crossing national boundaries.
- (2) Offences Punishable under Sections 121, 121A, 122, 123, 123A, 123B, 124, 124A, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139 and 140 of the Pakistan Penal Code.
- (3) Any abetment or conspiracy to commit any of the above offences.

STATEMENT OF OBJECTS AND REASONS

The Bill provides for protection against waging of war against Pakistan, prevention of acts threatening the security of Pakistan and for speedy trial of offences falling in the Schedule annexed to the Bill and for matters connected therewith or incidental thereto.

2. The Bill seeks to achieve the said purpose

SHAIKH AFTAB AHMED,
Minister of State for Parliamentary Affairs
Member-in-Charge